

GUIDE TO INTEREST RATES IN WASHINGTON STATE

The Department of Financial Institutions (“DFI”) has been frequently asked by Washington State consumers to help them understand what laws are applicable to interest rates. Because there are a number of laws and factors affecting this important consumer issue, it is sometimes difficult for consumers to get a clear picture of why some debts bear interest at high rates, while other obligations are burdened by much lower rates. In an effort to help explain the principal laws and factors that account for this phenomenon, the DFI has prepared the following general guide for Washington State consumers.

Important Notice — Read First. In offering this guide, the DFI cautions that it is not intended to be, nor is it the giving of, legal advice with respect to specific transactions. While broad in scope, this guide may not necessarily be exhaustive in detail — that is, this guide is not, of itself, authoritative, and may have inadvertently omitted a discussion of some relevant law. Any consumer or other person that has a question regarding the law, which applies to a specific transaction and its enforceability, is advised to seek independent legal counsel for advice and counsel. If, in answer to a general information inquiry, you have been directed by a DFI employee to review this Web guide, the DFI will likely be unable to provide you with any assistance greater than what is provided below. If, however, either before or after reviewing this guide, you have a *specific complaint* regarding a company DFI may regulate, please do not hesitate to call upon the DFI for further assistance, at (360) 902-8700.

NOTE: Regardless of compliance with or exemption from Washington State law regarding interest rates, a company in the business of consumer lending must still comply with other important federal and state laws (not discussed below) involving financial disclosures and equal credit opportunity, including the Truth in Lending Act, Real Estate Settlement Procedures Act and Equal Credit Opportunity Act. The DFI monitors and regulates the conduct of all of its regulated entities and licensees with respect to these other laws. If you have a *specific complaint* in this regard concerning a company DFI may regulate, please do not hesitate to call upon the DFI for further assistance, at (360) 902-8700.

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Introduction

Interest rates in Washington State (including discount points and other fees and charges that may also affect an overall rate) may vary considerably according to a variety of factors:

- Market conditions.
- Lender risk.
- Type of lender.
- Type of transaction.
- The applicability of or exemption from various federal and state laws regulating interest rates.

“Usury” is the unlawful act of charging interest on a debt (including discount points, fees and other charges) at a rate greater than what is permitted under any applicable law or exemption.

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General Usury Law in Washington State

Washington State has a Usury Law (see [RCW Chapter 19.52](#)) that generally sets forth the maximum rate of interest that may be charged by a lender of a borrower in Washington State who obtains a consumer loan that is *not* related to a credit card debt, retail installment contract or a consumer lease. For personal transactions that are not exempt from Washington State’s Usury Law, the general rule under [RCW 19.52.020\(1\)](#) is that, for consumer transactions *not* exempt from Washington State’s Usury Law, a lender may, if agreed in writing between the lender and borrower, exact an interest rate at a maximum rate of 12% per annum, or 4% above the first auction quote on the Federal Reserve’s 26-week treasury bills made in the month preceding a written agreement between lender and borrower, *whichever is higher*.

For many years, the Federal Reserve rate on 26-week treasury bills has remained below 8%, so that Washington State’s maximum interest rate under the general usury statute has effectively been 12%. If future economic conditions in the United States ever caused a radical shift in the government bond market so that the yield on treasury bills exceeded 8%, then the maximum interest rate permitted under [RCW 19.52.020\(1\)](#) would climb above 12%. This was certainly the case in the early 1980’s, when the yield on government bonds had soared so high that, for a brief time, interest rate on a consumer’s non-credit card and non-retail installment debt was permitted to legally exceed 21%!

Notwithstanding the general rule above, every loan shall bear interest at the rate of 12% per annum where no different rate is agreed to in writing, unless the writing in question provides for either payment of money (1) at the end of an agreed period of time (i.e., a “straight note” or “balloon note,” where all principal and interest is due at the end) or in installments over an agreed period of time (i.e., combined interest and principal are expressed together in a stated payment amount).

In a suit by a lender to collect on a non-exempt consumer debt, a defense of usury is available for loans that exceed the maximum interest rate as stated above, provided that the borrower can prove that the loan was obtained and used *primarily for personal, family or household purposes*. See [RCW 19.52.080](#).

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Exception — Commercial, Agricultural, Investment and Business Loans

If it is shown that a loan was made primarily for a commercial, agricultural, investment or business purpose, then a borrower in an action for enforcement may not claim a defense of usury against the lender. What this effectively means, then, is that interest rates on loans made primarily for a commercial, agricultural, investment or business purpose may exceed Washington State's Usury Law. See [RCW 19.52.080](#).

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Exception — Credit Card and Other Retail Installment Debts

Of course, credit card and other retail installment debt may, and frequently does, exceed the maximum rate of interest that may be charged pursuant to [RCW 19.52.020\(1\)](#). This is because Washington State's Usury Law generally does *not* apply to debts related to "retail installment transactions," as defined in [RCW 63.14.010\(8\)](#), which include "retail installment contracts," "retail charge agreements," "lender credit cards" (e.g., Nordstrom or Bon-Macy's) and "financial institution credit cards" (e.g., VISA or MasterCard). See [RCW 19.52.100](#).

[NOTE: As set forth in [RCW 63.14.165](#), except as provided in [RCW 63.14.167](#), a "financial institution credit card" agreement and credit extended pursuant to it is not subject to the provisions of RCW Chapter 63.14, but is subject to the provisions of chapter RCW Chapter 19.52. While this would appear, at first blush, to be restrictive in nature, it only means that if the credit card issuers comply with [RCW 63.14.167](#), they do not have to comply with the General Usury Law (RCW Chapter 19.52). (See [RCW 19.52.115](#), which redirects you to [RCW 63.14.165](#).) This is a provision well known and generally followed by credit card issuers.]

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Exception — Consumer Leasing

In the case of a consumer lease for a period exceeding 4 months on personal property up to \$25,000 in value [as defined at [RCW 63.10.020\(4\)](#)], a consumer may not raise a claim or defense of usury. See [RCW 19.52.150](#) and [RCW 63.10.060](#). Such consumer leasing includes such personal property as automobiles and furniture.

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Exception — Most Favored Lender Status for Depository Financial Institutions

Regardless of Washington State's Usury Law, a national banking association (e.g., Wells Fargo Bank, N.A., or Bank of America, N.A.) may charge interest on a consumer debt (including, without limitation, a retail installment or credit card debt) at the highest available rate available on any day for any other institution in the United States or U.S. Territories. [See [12 U.S.C. 85](#)] In addition, Washington State banking law, pursuant to [RCW 30.04.025](#), provides that any bank, trust company, mutual savings bank, savings and loan association or credit union authorized to do business and accept deposits in Washington State under either state or federal law [i.e., *any* depository financial institution in Washington State — [RCW 30.22.040\(12\)](#)] has the same "most favored lender" power and status as national banking associations have for this purpose. The addition of [RCW](#)

[30.04.025](#) to our statutes in 2003 was prompted by [House Bill 1759](#), which was introduced by the banking industry.

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Exception — Most First Lien Residential Mortgage Loans

The State of Washington and Washington State residents are generally preempted by federal law [[12 USC 1735f – 7A](#)] from enforcing Washington State's Usury Law with respect to any loan, mortgage, credit sale or advance that is secured by a first lien on residential real property, by a first lien on all stock allocated to a dwelling unit in a residential cooperative housing corporation, or by a first lien on a residential manufactured home, and is either:

- Made in whole or in part by any lender whose deposits or accounts are insured by any agency of the Federal Government, or is made in whole or in part by any lender that is itself regulated by any agency of the Federal Government; *or*
- Made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by the Secretary of Housing and Urban Development or any other officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by the Secretary of Housing and Urban Development or a housing or related program administered by any other such officer or agency; *or*
- Eligible for purchase by the Federal National Mortgage Association ("Fannie Mae"), the Government National Mortgage Association ("Ginnie Mae"), or the Federal Home Loan Mortgage Corporation ("Freddie Mac"), or from any financial institution from which it could be purchased by Freddie Mac; *or*
- Made in whole or in part by any "creditor" who makes or invests in residential real estate aggregating more than \$1,000,000 per year, who both (1) regularly extends consumer credit which is payable by agreement in more than four installments or for which the payment of a finance charge is or may be required, *and* (2) is the person to whom the debt arising from the consumer credit transaction is initially payable on the face of the evidence of indebtedness *or* by agreement; *provided that* —
 - In the case of an open-end credit plan involving a credit card, the card issuer and any person who honors the credit card and offers a discount which is a finance charge, are "creditors;" and
 - Any person who originates 2 or more "high interest mortgages" in any 12-month period or any person who originates 1 or more such mortgages through a mortgage broker shall be considered to be a "creditor." For this purpose, "high-interest mortgage" is a consumer credit transaction that is secured by the consumer's principal dwelling, where the annual percentage rate at closing exceeds by more than 10% the yield on U.S. Treasury Department securities having comparable periods of maturity on the 15th day of the month immediately preceding the month in which the loan application is received by the creditor, or the total points and fees payable by the consumer at or before closing will exceed the greater of 8% of the total loan amount or \$ 400.

Federal law, therefore, generally preempts Washington State's Usury Law from most *first lien* mortgage loans originated by *anyone who is in the business of making, originating or brokering mortgage loans*. A private lender who makes an isolated transaction, or a seller of a home who makes a first lien purchase money loan or land installment contract of sale with his or her buyer, will, however, generally be subject to Washington State's Usury Law.

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Exception — Second Mortgages & Home Equity Loans by Licensed Consumer Loan Companies

A Consumer Loan Company licensed under the Washington Consumer Loan Act ([RCW Chapter 31.04](#)) may generally make second mortgages and subordinate lien home equity loans on residential real estate at interest rates in excess of Washington State's Usury Law.

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Exception “Small Loans” Regulated Under Washington State Law

A licensed check casher or check seller under [RCW Chapter 31.45](#), who has obtained a “small loan endorsement” from the DFI pursuant to [RCW 31.45.030](#), may make a “small loan” up to \$500 (most commonly a “payday loan”) at interest rates that greatly exceed the maximum rate of interest under Washington State's Usury Law, provided that all proper disclosures are made and the licensee complies with all other terms of [RCW Chapter 31.45](#).

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Exception — Lease-Purchases on Personal Property

A lease-purchase of personal property under [RCW Chapter 63.19](#) is exempt from Washington State's Usury Law. See [RCW 19.52.010\(2\)\(b\)](#).

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Exception — Certain Financing of Mobile Homes

Washington State's Usury Law does not apply to the financing of a mobile home that has become “real property” as defined in [RCW 84.04.090](#), and which financing is insured by the federal government (e.g., FHA or VA). See [RCW 19.52.160](#).

[NOTE: The term “real property” includes a mobile home that has substantially lost its identity as a mobile unit by being permanently fixed in location upon land owned or leased by the owner of the mobile home and placed on a permanent foundation (posts or blocks) with fixed pipe connections with sewer, water, or other utilities.]

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Exception — Loans from a Tax-Qualified Retirement Plan

Washington State's Usury Law does not apply to any loan permitted under applicable federal law and regulations from a tax-qualified retirement plan to a person then a participant or a beneficiary under the plan. See [RCW 19.52.170](#).

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Exception — Certain Interest Charged by Broker-Dealers

A broker-dealer, who is registered under the Securities Act of Washington ([RCW Chapter 21.20](#)) and under the federal Securities and Exchange Act of 1934, is not limited by the maximum rate of interest under [RCW 19.52.020\(1\)](#) if the underlying loans made by the broker-dealer may be paid in full at the option of the borrower and are subject to Federal Reserve Board regulations. See [RCW 19.52.110](#).

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Exception — Interest, Penalties and Costs on Delinquent Property Taxes

Washington State's Usury Law does not apply to interest, penalties, or costs on delinquent property taxes. See [RCW 19.52.140](#).

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Exception — Deferred Payment of Purchase Price

Washington State's Usury Law does not apply to sales contract for goods or services providing for the deferred payment of the purchase price. See [RCW 19.52.120](#).

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Exception — Statutory Interest on Judgments

Statutory interest on judgments entered and enforced in Washington State courts may bear interest, pursuant to [RCW 4.56.110](#), as follows:

- *Written Contracts* – Rate set forth in the contract.
- *Unpaid Child Support* – 12% per annum.
- *Judgments for Intentional or Negligent Tortious Conduct* – 2% above the rate for 26-week treasury bills for the first auction quote in the month preceding the entry of judgment.

Otherwise, judgments in Washington State courts are to bear interest from date of judgment at the rate set forth in Washington State's Usury Law, at [RCW 19.52.020](#).

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